IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1894 OF 2004

Arif Amin Shaikh, Aged 41 years, Adult, Indian Inhabitant, residing at 94/752, M.H.B.Colony, D.G.Nagar, Malwani, Malad (West), Mumbai - 400 095, at present detained in Nashik Road Central Prison. .. Petitioner

Versus

1. A.N.Roy, Commissioner of Police, Brihanmumbai.

2. The State of Maharashtra,

3. The Superintendent, Nashik Road Central Prison, Nashik. .. Respondents

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Shri Diwakar Dwivedi for the petitioner.

Shri D.S.Mhaispurkar, APP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 19TH JANUARY, 2005.

JUDGMENT:

1. The petitioner challenges the continued detention on the ground of failure to consider the representation by the detaining authority.

2. The petitioner is the detenu and at present lodged at Nashik Road Central Prison at Nashik, consequent to the arrest and detention since 30th March, 2004. The order of detention was passed on 29th March, 2004 in exercise of powers under Section 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (hereinafter called as "the MPDA Act".) The petitioner made representation dated 1st April, 2004. On 6th April, 2004, the detention of the petitioner was approved by the State Government. On 24th April, 2004, the petitioner's Advocate was informed about inability of the detaining authority to consider the representation as the detention was already approved by the State Government prior to receipt of the representation by the detaining authority.

3. Though the petition was filed challenging the detention on various grounds, the learned Advocate has restricted the challenge to the continued detention with effect from 6th April, 2004 while giving up other grounds of challenge. It is the contention of the learned Advocate for the petitioner that the representation of the detenu dated 1st April, 2004 was duly forwarded to the detaining authority by his

lawyer on the same day. However, the same was not considered by the detaining authority and the State Government was allowed to approve the detention of the petitioner by the order dated 6th April, 2004, acting in a breach of the provisions of law comprised under the MPDA Act as well as the Article 22(5) of the Constitution of India. It is the contention of the petitioner that it was obligatory for the detaining authority to consider the representation expeditiously and to communicate the decision thereon to the petitioner without waiting for the State Government to approve the detention. Reliance is sought to be placed in the decision of the Apex Court in the matter of **State of Maharashtra & Ors. v. Santosh Shankar Acharya,** reported in (2000) 7 SCC 463 and **Rama Dhondu Borade v. V.K.Saraf, Commissioner of Police & Ors.,** reported in AIR 1989 1861. It was the contention of the learned Advocate for the Petitioner that the representation was addressed to the detaining authority as was informed to the detenu in Paragraph No.8 of the Grounds in support of the detention order and it was duly presented in the office of the detaining authority.

4. On the other hand, it is the case of the respondents that the representation made by the

Petitioner, though was dated 1st April, 2004, was received in the office of the detaining authority on 12th April, 2004 much after the approval was granted by the State Government to the detention of the petitioner, and therefore, it was not possible for the detaining authority to consider the representation, and it was accordingly informed to the detenu under letter dated 24th April, 2004. Being so, according to the respondents, the continued detention of the petitioner cannot be held to be illegal as there has been no violation of the provisions of the law and much less of the Article 22(5) of the Constitution of India.

5. The law on the point that the detenu under the MPDA Act is entitled as a matter of right to make a representation to the detaining authority so long as the order of detention has not been approved by the State Government as well as the obligation of the detaining authority to inform the detenu about his right to make such a representation has been well settled consequent to the decision of the Apex Court in **Santosh Acharya's case (supra).** It was clearly held therein that "it goes without saying that even under the Maharashtra Act a detenu will have a right to make a representation to the detaining authority so

long as the order of detention has not been approved by the State Government and consequently non-communication of the fact to the detenu that he has a right to make a representation to the detaining authority would constitute an infraction of the valuable constitutional right guaranteed to the detenu under Article 22(5) of the Constitution and such failure would make the order of detention invalid." The point which arises in the case in hand is whether the detenu had presented the representation to the detaining authority prior to the approval of his detention by the State Government ?

6. It is not in dispute that the order of detention was executed on 30th March, 2004. Undisputedly, under Para No.8 of the grounds in support of the order of detention, the detenu was informed about his right to make a representation and that the same was required to be addressed to the Commissioner of Police, Brihan Mumbai, C/o. Deputy Commissioner of Police (Preventive) Crime Branch, 3rd Floor, Shivaji Market, Mata Ramabai Ambedkar Marg, Mumbai - 400 001, through the Superintendent of Jail, where the detenu was detained. It is a matter of record and undisputed fact that the representation of the petitioner dated 1st April, 2004 was made by the

petitioner through his lawyer and it was addressed to the Commissioner of Police, Brihan Mumbai, C/o. Deputy Commissioner of Police (Preventive) Crime Branch, 3rd Floor, Shivaji Market, Mata Ramabai Ambedkar Marg, Mumbai - 400 001, and it was presented to the Entry Clerk of the office of the Commissioner of Police, Brihan Mumbai. The initial of the Entry Clerk on the duplicate of the said representation also discloses the date "1/4". Obviously, therefore, it is apparent from the record that the representation was presented with the Entry Clerk of the office of the Police Commissioner, Brihan Mumbai on 1st April, 2004. The contention of the learned Advocate for the respondents, however, is that such a presentation of the representation was not at the address disclosed in the grounds and communicated to the petitioner, and therefore, it could not reach the detaining authority prior to 6th April, 2004, the date on which the detention of the petitioner was approved by the State Government, and therefore, the detaining authority could not consider the representation. It is not in dispute that once the detention of the petitioner is approved by the State Government, the detaining authority ceases to have jurisdiction to consider the representation.

7. Perusal of the grounds and particularly the Para No.8 thereof, wherein the detenu was informed about the right to make representation, clearly reveals the authority to whom the representation was required to be addressed to as well as the place where the representation was required to be presented. The intimation in that regard in Paragraph 8 reads thus:-

> "Should you wish to make such a representation, you should address it to the Commissioner of Police, Brihan Mumbai, C/o. Deputy Commissioner of Police (Preventive) Crime Branch, 3rd Floor, Shivaji Market, Mata Ramabai Ambedkar Marg, Mumbai - 400 001, through the Superintendent of jail, where you are detained."

Obviously, the intimation not only informs the designation of the authority to whom the representation was required to be addressed to but it also discloses the place of presentation of the representation. It clearly required the representation to be addressed to the Commissioner of Police, with the specific address. It further required to be presented through the Superintendent of Jail where the detenu was detained. Undoubtedly,

nothing prevents the detenu from presenting his representation through his lawyer. However, even such representation was required to be addressed to the Commissioner of Police and required to be presented at the address given in the said intimation. It was not left to the discretion of the detenu to present such representation at the address of his choice or that of his Advocate. Besides, to facilitate proper presentation, it was advised to be presented through the Superintendent of Jail.

8. The law laid down by the Apex Court in **Santosh Acharya's case (supra)** is not to the effect that the detenu is entitled to make representation to the detaining authority at the address of his choice. On the contrary, the requirement of law is that the intimation should disclose the authority as well as its address for the purpose of representation and the detenu is expected to address his representation to such authority and to submit the same at the required address. If the detenu instead of submitting the representation at the required address submits the same at any other place which consequently results in delay in considering such representation, then it would not affect the detention in any manner nor it would create any right in favour of the detenu to

contend that the delay has resulted in prejudice to him. In the circumstances, the delay having occurred on account of acts on the part of the detenu himself, the same cannot affect the validity of the detention or continuation thereof, nor there could be any occasion to blame the authorities of failure to comply with their obligations.

9. Undoubtedly, the constitutional protection guaranteed under Article 22(5) of the Constitution of India mandates liberty to the detenu to make representation against the detention and requirement of consideration thereof by the competent authority without any delay. Obviously, therefore, infringement of the said provisions would amount to an infringement of constitutional right conferred under Article 22(5) of the Constitution to the detenu and it would result in vitiating the detention order. The Apex Court has clearly observed in **Union of India & Anr. v. Paul Manickam & Anr.,** reported in (2003) 8 SCC 342 that "Personal liberty protected under Article 21 is so sacrosanct and so high in the scale of constitutional values that it is the obligation of the detaining authority to show that the impugned detention meticulously accords with the procedure established by law." At the same time, however, it has been also

observed by the Apex Court in the said decision that an unscrupulous detenu cannot be allowed to create a smokescreen to take the authorities by surprise by acting surreptitiously or with ulterior motives. Undoubtedly, the Apex Court therein was dealing with the matter where the representation was made to an authority which was not the indicated authority for the purpose of representation. In the said case, the representation was made to the President of India instead of the authority indicated for the said purpose.

10. In the case in hand, undoubtedly, the representation was addressed to the authority to whom it was required to be addressed to in terms of the intimation given to the detenu in that regard. However, as already observed above, it was not presented at the address indicated in the intimation and where the representation was required to be presented. The respondents in their affidavit have clearly disclosed that the representation which was presented by the petitioner at the address other than the one at which it was required to be presented was received by the concerned authority only on 12th April, 2004, much after the approval of the detention by the State Government. The fact that the

representation was received in the office of the detaining authority on 12th April, 2004 is neither disputed nor it can be disputed, as the records clearly reveal the same. The contention of the petitioner however is that once it was delivered in the office of the respondents, it was the responsibility of the respondents to present the same to the detaining authority without any delay. Neither the provisions of law nor the judicial pronouncement support the contention of the petitioner. On the contrary, as already observed above, the law laid down by the Apex Court clearly requires the detenu to address the representation and to present the same to the authority and at the place indicated in that regard to the detenu. In case of any failure or lapse in that regard on the part of the detenu and resultant delay in considering the representation cannot enure to the benefit of the detenu. In fact, in the recent decision by the Apex Court in the matter of **Union of India & Anr. v. Chaya Ghoshal & Anr.,** reported in 2004 AIR SCW 6999 dealing with a case wherein the representation was handed over to a person not authorised to receive the same and consequently the delay had occasioned on account of inaction on the part of such unauthorised person, held that "It has to be noted that the Detaining Authority and/or the

Central Government and/or the State Government, as the case may be, have to explain the action taken on the representation after it had reached the concerned authority. The representation should be received by a person authorized to receive it. The Detaining Authority or the concerned authority of the Central Government may have authorized some members of the staff to receive representation or any official document. If the representation is handed over to or served on a person who is not authorized to receive it the concerned authority cannot be held responsible if any delay is occasioned on account of inaction by such unauthorized person. If any dispute is raised about the authority of the person to whom the representation is claimed to have been handed over or served, the person making the representation on behalf of the detenu or the detenu, as the case may be, has to establish as to on whom the service was effected and he had authority to receive the document in question." Obviously, therefore, the obligation is cast upon the detenu to address the representation and to deliver the same to the indicated authority or the person and not to any other person. In case, the detenu choses to deliver the representation to a person not indicated to receive the same, it would be for the detenu to justify such action in order to establish

that the person who had received the representation had authority to receive the same, failing which, if any delay is occasioned in considering the representation, it cannot enure to the benefit of the detenu in any manner.

11. In the case in hand, undisputedly, the representation though was addressed to the indicated authority, it was not presented at the address indicated to the detenu. Being so, it was necessary for the detenu to establish that the office at which the representation was presented by the Advocate for the detenu had authority to receive such representation and in the absence of such justification, no credence can be given to the contention sought to be raised regarding failure on the part of the respondents to locate the representation in time and to consider the same prior to 6th April, 2004. The delay which had occasioned is entirely attributable to the acts of the detenu's Advocate and for which the respondents cannot be blamed. We are clearly supported in the view we are taking in the matter by the decision of the Apex Court in **Chaya Ghoshal's case (supra).**

12. Since no other ground is pursued for assailing

the detention of the petitioner, for the reasons stated above, the petition fails and is, therefore, liable to be dismissed. Hence, the petition is dismissed and rule is discharged with no order as to costs.

(R.M.S.Khandeparkar, J)

(P.V.Kakade, J)